

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

W.R. GRACE & CO., *et al.*,
Debtors.

Chapter 11

Case No. 01-01139 (JKF)
Jointly Administered
Related Docket Nos. 19581, 19620

**ARROWOOD'S INITIAL DEPOSITION DESIGNATIONS
OF TESTIMONY OF JEFFERY POSNER, RICHARD FINKE, JAY HUGHES, AND
PETER VAN N. LOCKWOOD, AND REQUEST FOR JUDICIAL NOTICE**

Arrowood¹ hereby designates the deposition testimony of Jeffery Posner and Richard Finke as set forth, respectively, in Exhibit A, and Exhibit B, Peter Van N. Lockwood as set forth in Exhibit C and Jay Hughes as set forth in Exhibit D, for the Phase I and II confirmation hearings.² Messrs. Posner, Hughes, and Finke are employees and/or corporate designees of the Debtors.³ Mr. Lockwood is a designee of the Asbestos Claimants' Committee. The designated deposition testimony of Messrs. Posner, Finke, Hughes and Lockwood constitute a party admission. *See* Fed. R. Evid. 801(d)(2)(A) (a party admission exists where "[t]he statement is offered against a party and is the party's own statement, in either an individual or a representative capacity . . .").⁴ The Libby claimants were given notice of both depositions, and invited to attend

¹ Arrowood Indemnity Company f/k/a Royal Indemnity Company.

² Arrowood reserves and restates its objection to separate confirmation hearings for insurers as prejudicial and contrary to basic notions of due process.

³ Arrowood reserves the right to make further and additional deposition designations and will do so. These designations deal with specific topics.

⁴ Under Federal Rule of Evidence 201, judicial notice may be taken of any fact "that is not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b). A court may take judicial notice *sua sponte* and must take judicial notice "if requested by a party and supplied with necessary information." *Id.*, Rules 201(c), (d), (f). These depositions were taken as part of this bankruptcy proceeding. The requirements of Rule 201 have thus been met. *See Lee v. City of Los Angeles*, 250 F.3d

and cross-examine, (*See* Notice of Deposition of Jeffery Posner at Dkt. Nos. 21437, 21420, 21443, 21449, 21479; Notice of Deposition of W.R. Grace & Co. at Dkt. Nos. 21386, 21238, 21265, 21263; Notice of Deposition of ACC at Dkt. Nos. 21241, 21261, 21264, 21376, 21384, 21442, 21454; Notice of Deposition of Jay Hughes at Dkt. Nos. 21913, 21978), they did attend and cross examine, and that they did not elicit testimony contrary to the designated testimony.

Jeffery Posner
In Re W.R. Grace, et al., Case No. 01-01139(JKF)
Deposition Testimony on May 6, 2009 (*See* Exhibit A)

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Richard Finke
In Re W.R. Grace, et al., Case No. 01-01139(JKF)
Deposition Testimony on May 13, 2009 (*See* Exhibit B)

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Peter Van N. Lockwood
In Re W.R. Grace, et al., Case No. 01-01139(JKF)
Deposition Testimony on May 1, and May 4, 2009 (*See* Exhibit C)

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Jay Hughes
In Re W.R. Grace, et al., Case No. 01-01139(JKF)
Deposition Testimony on June 11, 2009 (*See* Exhibit D)

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668, 669 (9th Cir. 2001) (“under Fed. Rule of Evid. 201, a court may take judicial notice of matters of public record”) (citations and internal quotation marks omitted).

Arrowood reserves its right to add additional designations beyond these initial designations.

Dated: June 17, 2009
Wilmington, Delaware

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